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DEC 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 3

AMERICAN SURETY COMPANY OF NEW YORK,
Petitioner,

—against—

VIVIAN F. BALDWIN and E. R. BALDWIN,
Respondents.

PETITIONER'S MEMORANDUM ON MOTION TO DISMISS CERTIORARI.

Petitioner frankly believes that there is no merit in its own appeal to the Supreme Court of Idaho, referred to at page 3 of Respondents' motion to dismiss*; but merely because the Idaho Supreme Court indicated petitioner's remedy was by way of appeal (R. 54), petitioner felt compelled to pursue such appeal, despite its apparent hopelessness. Such appeal has not yet been determined.

Meanwhile, if no right of appeal is in fact available by reason of the Idaho Statute of Limitations, the time to present a petition for certiorari to this Court expired October 31, 1931.

Petitioner was consequently compelled to present the petition for *certiorari* to this Court in order to preserve

petitioner's rights, in case this Court shall be of the opinion that the judgment sought to be reviewed thereby is final.

Respectfully submitted,

WILLIAM MARSHALL BULLITT,
ALLAN C. ROWE,
Counsel for Petitioner.

NOTE: The Idaho Statute of Limitations limits the period within which such appeal may be taken to 90 days (Sect. 7152 Idaho Compiled Statutes). The judgment was entered June 23, 1930 while the appeal was taken July 13, 1931. The Idaho Supreme Court has recently held that an order (subsequently reversed on appeal) vacating a judgment does not suspend the operation of the Idaho Statute of Limitations (*Mountain States Implement Co.* v. *Arave*, 2 Pac. (2) 314, not yet officially reported).